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Personnel Separation & Retirement
24 JUN 1954

MEMORANDUM FOR: Legislative Counsel

SUBJECT: Deprivation of Annuity and Salary Rights of Employees Who Are Convicted of Certain Offenses or Who Refuse to Testify on Grounds of Self-incrimination.

REFERENCES: (1) S. 2762, 83rd Congress, 2nd Session
(2) H. R. 9909, 83rd Congress, 2nd Session

1. S. 2762 prohibits payment of salary and retirement benefits to present and former Governmental employees who refuse on grounds of self-incrimination to give testimony before Congressional Committees. H. R. 9909 prohibits payment of a Civil Service retirement annuity or military retired pay to Federal employees if such personnel:

a. Have been convicted or are convicted in the future of certain offenses, designated in the proposed bills, or

b. Have refused or refuse in the future to testify before a Congressional Committee on the grounds of self-incrimination.

Apparently, neither bill would divest an individual of annuity rights if he were to refuse to testify on the grounds of free speech under the First Amendment.

2. Since an employee affected by these bills would not forfeit contributions made into the Retirement Fund, the general effect would appear to be the curtailment of annuity benefits which the Congress has bestowed by law and which, in its discretion, it may take away. We note that retirees could be deprived of annuity rights after they have acquired title thereto, but we are not in a position to judge the legality of this provision.

3. We are appreciative of the position that has been assumed by the President on these issues and of the favorable disposition toward these proposals by many Congressmen (highlighted by the case). It therefore seems proper for the Agency to acquiesce in these proposals as an appropriate public policy.

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4. It appears that H.R. 9909 and S. 2762 would not deprive an employee of pay or retirement rights if he refused to appear before a Congressional Committee at the instruction of the Agency. However, a former employee, no longer under the jurisdiction of the executive branch, could be subpoenaed by Congress to testify as a private citizen on matters of material concern to the Agency. Annuity rights might be denied to an individual forced to plead self-incrimination in order to protect Agency intelligence sources and information or previous associations effected in behalf of the Agency. Such an individual might be under considerable pressure to reveal information concerning his Agency activities if he were deprived of an annuity or military retired pay for making a plea of self-incrimination or refusing to acknowledge certain connections.

5. As a general proposition, employees or ex-employees should not be penalized for compliance with requirements peculiar to the Agency because of its prohibition against testimony or production of documents concerning Agency operations.



George L. Maloon
Deputy Assistant Director
for Personnel

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~~TOP SECRET~~

5 August 1954

MEMORANDUM FOR: Mr. Pforzheimer

SUBJECT : H.R. 9909 (As Amended in Committee)

1. You have asked that I review H.R. 9909, a bill to prohibit payment of annuities to officers and employees of the United States convicted of certain offenses, and for other purposes, as amended in committee and reported out therefrom on 23 July 1954.

2. Most of the amendments which were made on the bill are of a technical nature. The few substantive changes largely are unimportant with regard to CIA.

3. Of note are the following:

- a. Amendment 7: This amendment changes in some slight respect Section 2(b)(1), which provides for the forfeit of his annuity benefits by any person who makes false, fictitious, concealing or fraudulent, etc., statements with regard to past or present membership, affiliation or association with, or support of, any party of the general composition and purposes normally attributed to the Communist Party. Among those entities, association with or support of which can result in a forfeit of such benefits, an "individual" is deleted. While the amendment to some extent tightens the scope of Section 2(d)(1), its general looseness, as described in my previous memorandum of 20 July 1954, still subsists. Consequently the caveat previously indicated obtains, if to a slightly lesser extent.
- b. Amendment 11: This provides generally that a presidential pardon, either for a conviction of certain offenses, under Section 1 of the Act, or for the commission of certain acts specified in Section 2, will operate to restore annuity benefits proscribed under the circumstances set out under Sections 1 and 2. In my previous memorandum (paragraph 8, page 4), I pointed out that there was some doubt as to the efficacy of a pardon as regards clearing the record of the offense committed, as opposed to the punishment therefor. While the amendment does not, in terms, act to clear the record, it does specifically provide for doing away with the penalty and restoring the rights impaired.

4. Subject to the above, I consider my previous memorandum accurately to reflect my opinion of the effect of the legislation upon the affairs of this Agency.

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Mr. Pforzheimer

20 July 1954

MEMORANDUM FOR: General Counsel

SUBJECT : H. R. No. 9909, "A Bill to Prohibit Payment of Annuities to Officers and Employees of the United States Convicted of Certain Offenses, and for Other Purposes"

1. Mr. Pforzheimer relayed to me your request that I examine this proposed legislation to the end of estimating the extent of its probable impact on employees of this Agency.

2. Generally the legislation seeks to withhold the remission of "any annuity or retired pay" to "any person" (who is "an officer or employee of the Government") who either is (a) convicted of certain crimes against the United States; (b) refuses to appear or testify before certain federal tribunals or quasi-tribunals; or (c) makes any false statement as regards certain matters in an application for federal employment, or any two, or all, of these.

3. The particular issue is whether, by virtue of the peculiar functions of this Agency, any of its employees engaged in the discharge of such functions stand to sacrifice their entitlements to retirement annuities under the terms of the proposed statute. Generally, of course, the issue is that of the recently bruited one of the separation of powers between the three branches of the federal government.

4. The rather long first section of the statute prohibits the payment of a retirement annuity to any officer or employee of the Government who is convicted of either (a) certain cited offenses against the federal criminal code; (b) "a felony under the laws of the United States or of the District of Columbia"; (c) perjury, or (d) certain cited offenses against the "code of law for the District of Columbia." From the Agency point-of-view, the nexus of this section is the proviso that a conviction has been had. Lacking a conviction, there can be no sacrifice of a retirement annuity. This being so, I foresee a negligible impact of the first section on CIA personnel for two reasons. First, such are the characters of the various crimes delineated vis-a-vis the general character of our operations as reasonably to preclude any transgressions by our people in the most enthusiastic discharge of even our more occult functions. Thus, as a practical matter, it is difficult to envision a CIA employee intentionally, and under orders, accepting bribes; committing treason or sedition, perpetrating a felony; peddling "influence"; committing or suborning to perjury or doing any of these, and related, things which additionally constitute violations of the D.C. Code. Second, in what I consider to be that rare instance in which operational necessity demanded that any of these things be done, I assume that we could, and would, prevent the case from progressing

even so far as the indictment stage. I am informed that recent conversations with the Department of Justice indicate a contrary possibility. However, I cannot but believe that the government's left and right hands are connected somewhere.

5. The second section of the statute imposes the penalty upon any person who, upon the ground of self incrimination, refuses to

... appear, testify, or produce any book, paper, record, or other document, with respect to his service as an officer or employee of the Government or with respect to any relationship which he has had or has with a foreign government. . .

before a Grand jury, federal court or congressional committee. Of controlling significance in this regard is that the refusal be upon the basis of self incrimination. A refusal upon any other basis is left untouched. This being so, an employee of this Agency properly still could refuse to do any of the acts enumerated by the statute on the basis of the doctrine of "state secrets." While this doctrine is one of case law (see Totten v. United States, 92 U.S. 105 (1875); United States v. Reynolds, 345 U.S. 11 (1953); Grafton Booth Tucker v. United States, ___ U.S. ___ (1954) and Federal Bar Journal, Vol. XIV, No. 2, Part II (1954), p. 116, et. seq.), it is not unreasonable to presume its adoption by Grand juries or congressional committees, both of which bodies are quasi-judicial in nature. And there is little doubt that the essence of the doctrine has been adopted by the Executive Branch in denying access by the Legislative to papers and documents in the possession of the Executive (See Opinion of the Attorney General in the matter of testimony which can be given before the Permanent Investigating Subcommittee of the Senate Committee on Government Operations by members of the Executive Branch, Op. A.G. ___ (1954), and cases cited. A contra, see 64 Stat. 160, 50 U.S.C. 46b ("Information for Congressional committees")). I use the word "properly" advisedly. Given the subject matter set out in the statute with regard to which the refusal must be made, in order to be subject to the penalty, and it almost is bound to touch on sensitive information. Particularly would this be true as regards a relationship with a foreign government on the part of a CIA employee-witness. From this it follows that the ground of self incrimination, at the most, would be an additional basis for a refusal to appear, testify, etc. And as it would subject the witness to the penalty of the statute, as a practical matter it is to be, and can be, avoided. I conclude that this section would have negligible impact on employees of this Agency because they need not refuse on the basis of self incrimination.

6. The third section imposes the penalty on any person who

... makes any false, fictitious, or fraudulent statement or representation, or who ... conceals any material fact, with respect to his --

- (1) past or present membership in, affiliation or association with ... (any organization of the type and with the purpose of the Communist Party) ...

- (2) conviction of any offense . . . (of the types set out in the first section) . . . or
- (3) failure or refusal to appear, testify, . . . (etc.) . . .

in an application for federal employment. As a matter of pure law, this section could be troublesome to an ex-CIA employee seeking other federal work. This for at least two reasons. First, if the word "conceals" can be held to comprehend "withholds", then such an employee who, on behalf of this Agency, had gone into and worked with some Communist organization and also who, in the interests of protecting classified information and of abiding by his secrecy oath, did not furnish these particulars on his federal employment application would be in violation of the terms of the statute. Second, the phrase "association with" is so loose and general as to comprehend almost any ex-employee of this Agency who had been engaged in operations against the Communists. And the failure to particularize with regard to past employment again conceivably could cause a transgression of the statute. On the other hand, there are the practical considerations of the intent of the law and of reasonable meanings to be imparted to its language. Balancing these, and related, considerations against the naked words of the statute, it is hard to derive any threat from them.

7. Finally there is the policy issue of whether, granting some modicum of adverse effect of the proposed legislation on the employees and operations of this Agency, it is worth the seeking of statutory exception in favor of the Agency, perhaps also for, and in conjunction with, the FBI, the character of the operations of which in this country would seem to make it more susceptible to the proposed law than CIA. The decision here is the one between the gravity of the threat of the legislation to this Agency's people and operations and the perhaps undue attention we would attract were we to go to the Hill and seek a special dispensation. Weighing the various considerations involved, it is my judgement that we do not raise our voices now. Not necessarily in the order of their importance, my reasons are these. First, the bill may not pass. Second, I have reservations as to its constitutionality insofar as it purports to be retroactive in effect. Third, given any reasonable interpretation and assuming a conduct of our affairs not bordering on the lurid, its provisions would touch us infrequently, if at all. Fourth, I believe that the less we seek favored treatment at the hands of the Congress, the better it is for us. And fifth, given the proper handling, I believe that we should be able to work out our problems with Justice and the Congress through the side, if not the back, doors.

8. In closing, I bring to your attention two items which are related to this general matter and which, in your opinion, may necessitate further consideration of the position taken in this paper. As regards the first section of the proposed legislation and its provisions with regard to the conviction of a felony, I know of at least one instance where a felony has been perpetrated by a CIA employee in the regular discharge of his duties. This was [redacted]

[redacted]

[redacted] If this has happened once, undoubtedly it has happened more; and, from the stories which I have heard, often from the mouths of the horses concerned, events overseas sometimes take a more dramatic turn. Next, it appears to be a matter of ruling case law that a Presidential pardon for an offense, while excusing the commission of the offense, does not wipe the record clean. Thus, a man had committed a felony and been pardoned by the President. He sought to enlist in the Army but was held ineligible by reason of his commission of the felony. He filed suit against the United States contesting the holding of ineligibility and pleading the Presidential pardon. The court held that the pardon did not obviate the fact of the commission of the felony, it being a matter of record, but went only to the punishment therefor, and that the man correctly had been held ineligible for enlistment. Unfortunately I cannot cite the case as it is one which I happened onto in another connection and over at the Department of Interior Law Library. It can be procured however.

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9. Finally, I am advised informally by a member of the Office of the Legislative Counsel, House of Representatives, that the matter of the impact of H.R. No. 9909 on security agencies, particularly the FBI, has been considered by the (House) Committee on Post Office and Civil Service and that, if this impact is concluded to be hampering, "something will be done about it." The FBI has not appeared at any of the hearings so far. The member advised also that he thought the chances of the bill's passing during this session were extremely slim, attributing this to the reputation of the committee concerned for being unable to do things in a hurry.

10. On the basis of the foregoing, it is my opinion that this Agency should take no steps now looking toward exceptional treatment under H.R. No. 9909.

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